

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Ariel Courage	Team: Team # 5	CCRB Case #: 201312092	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Wednesday, 12/25/2013 2:49 AM	Location of Incident: § 87(2)(b)	Precinct: 79	18 Mo. SOL 6/25/2015	EO SOL 6/25/2015	
Date/Time CV Reported Mon, 12/30/2013 4:34 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Mon, 12/30/2013 4:34 PM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. POM Andrew Burgos	25141	948185	079 PCT
2. POM Brian Mochrie	25039	947810	079 PCT
3. POM Kinski Titus	31796	953483	PBBN

Officer(s)	Allegation	Investigator Recommendation
A.POM Andrew Burgos	Abuse: PO Andrew Burgos entered and searched § 87(2)(b) in Brooklyn.	§ 87(2)(b)
B.POM Andrew Burgos	Force: PO Andrew Burgos used physical force against § 87(2)(b)	§ 87(2)(b)
C.POM Brian Mochrie	Force: PO Brian Mochrie used physical force against § 87(2)(b)	§ 87(2)(b)
D.POM Kinski Titus	Force: PO Kinski Titus used physical force against § 87(2)(b)	§ 87(2)(b)
§ 87(4-b) § 87(2)(g)	§ 87(2)(b)	§ 87(2)(b)

### Case Summary

On December 30, 2013, § 87(2)(b) filed a complaint with the CCRB via telephone. On December 25, 2013, at approximately 2:49 a.m., in the vicinity of § 87(2)(b) in Brooklyn, PO Andrew Burgos of the 79<sup>th</sup> Precinct arrested § 87(2)(b). The following allegations resulted:

**Allegation A – Abuse of Authority: PO Andrew Burgos entered and searched § 87(2)(b) in Brooklyn.**

**Allegation B – Force: PO Andrew Burgos used physical force against § 87(2)(b)**

**Allegation C – Force: PO Brian Mochrie used physical force against § 87(2)(b)**

**Allegation D – Force: PO Kinski Titus used physical force against § 87(2)(b)**

§ 87(2)(g)  
§ 87(2)(g)  
§ 87(2)(g)  
§ 87(4-b) § 87(2)(g)  
§ 87(2)(g)  
§ 87(2)(g)  
§ 87(2)(g)

### Results of Investigation

#### Civilian Statements

**Complainant/Victim:** § 87(2)(b)

- At the time of this incident, § 87(2)(b) was § 87(2)(b) old. § 87(2)(b) is a black male, 5'11" tall, 200 pounds, with black hair and brown eyes. § 87(2)(b)

#### CCRB Statement

§ 87(2)(b) made statements pertaining to this incident in filing his complaint on December 30, 2013 (encl. [4A-B]), via telephone on January 24, 2014 (encl. [4C-D]), and in-person on February 7, 2014 (encl. [4E-K]). § 87(2)(g)  
At the time of this incident, § 87(2)(b) lived at § 87(2)(b) in Brooklyn. § 87(2)(b)'s father, § 87(2)(b) owns and manages the building. § 87(2)(b) and § 87(2)(b) had an arrangement where § 87(2)(b) would pay his father a portion of the building's utilities in exchange for one of two basement rooms. The second basement room belonged to § 87(2)(b). § 87(2)(b) chose to do so because it is illegal to house tenants in the unfinished basement and he could not therefore charge § 87(2)(b) rent formally. § 87(2)(b) had been living there for several months. § 87(2)(b) has a contentious relationship with § 87(2)(b) who argued with § 87(2)(b) when he brought home friends.

On December 25, 2013, at 2:49 a.m., § 87(2)(b) brought a female friend who remains unidentified to § 87(2)(b). § 87(2)(b) and § 87(2)(b) began to argue, and the female friend left. § 87(2)(b) felt § 87(2)(b) was harassing him, and began recording him on his cell phone to document this. § 87(2)(b) told § 87(2)(b) that he was going to call the police. § 87(2)(b) denied threatening § 87(2)(b) with a box cutter, or being in possession of one at the time of the incident. § 87(2)(b) left § 87(2)(b)'s room and called the police. § 87(2)(b) did not hear what § 87(2)(b) told the 911 operator. § 87(2)(b) felt that

he had done nothing wrong and was confident that he could explain the incident to police, and stayed in his room with the door three-quarters of the way open.

Five to ten minutes later, two or three officers entered § 87(2)(b)'s room. § 87(2)(b) described the first officer who entered as a white male, 5'7" to 5'8" tall, with dirty blond hair, slightly heavy-set, in his 40s, and uniformed. He was identified by the investigation as PO Burgos. § 87(2)(b) described the second officer to enter as a black male in his 40s, 6'0" to 6'1" tall, with average build and facial hair that included a moustache. This officer remains unidentified. § 87(2)(b) described the third officer as a white male with husky build, 5'9" tall, in his 30s or 40s, with dark hair. This officer was identified by the investigation as PO Brian Mochrie. § 87(2)(b) did not know where § 87(2)(b) was when officers entered. One or two other officers who § 87(2)(b) could not describe waited in the hallway outside of his room.

When the officers entered, § 87(2)(b) was standing slightly to the left of the door, and was on his cell phone with his community advocate. None of the officers requested or received his permission before entering. § 87(2)(b) also did not explicitly tell them they could not enter. § 87(2)(b) said, "This is where I live. What's the problem?" § 87(2)(b) ignored PO Burgos's multiple orders to put his cell phone down. § 87(2)(b) said, "I have video footage [of § 87(2)(b) I didn't do anything. I can prove it." None of the officers responded.

PO Burgos punched § 87(2)(b) on the left side of his face near his ear, grabbed him by his left arm, and threw him face-down onto the futon, causing a one- or two-inch tear in the left sleeve of the jacket he wore (encl. [4H]). § 87(2)(b) at some juncture dropped his phone. PO Burgos, the unidentified white male officer, and the unidentified black male officer then began to punch § 87(2)(b) on his head, neck, and face repeatedly. One of the punches landed on § 87(2)(b)'s left ear, causing the diamond stud earring he wore to fall out. § 87(2)(b) could not tell which officer struck what parts of his body. PO Burgos braced his elbow against the back of § 87(2)(b)'s neck (in his telephone statement, § 87(2)(b) alleged that an officer who he could not see placed his knee on the back of his neck). § 87(2)(b) did not hear officers issue orders and denied resisting, citing his desire not to re-aggravate his pre-existing injuries from a car accident several months prior. After one minute of physical struggle (in his telephone statement, § 87(2)(b) estimated that the struggle lasted only a few seconds), one of the officers pulled both of § 87(2)(b)'s arms behind his back from under his chest and handcuffed him tightly. § 87(2)(b) sustained back and neck pain from re-aggravating his prior injuries and "cauliflower ear," or swelling to his left ear (in his telephone statement, § 87(2)(b) alleged he sustained a cut inside his mouth, and in his intake statement alleged that he sustained swelling to his head). § 87(2)(b) also sustained swelling and marks to his wrists from being handcuffed tightly. No officer ever adjusted his handcuffs.

Once he was handcuffed, § 87(2)(b) was transported to the 79<sup>th</sup> Precinct stationhouse in one of three marked police vehicles on scene. § 87(2)(b) told officers that he was going to sue them. § 87(2)(b) did not seek or obtain medical attention while in police custody. § 87(2)(b) informed personnel at § 87(2)(b), where he has been receiving physical therapy for the aforementioned pre-existing injuries, of this incident, but did not otherwise seek treatment. At criminal court, § 87(2)(b) learned that he was charged with § 87(2)(b), and an order of protection was issued against § 87(2)(b) on behalf of his father.

A few days later, § 87(2)(b) returned to § 87(2)(b) with a police escort to retrieve his property, and saw that his cell phone was on the floor of the basement room with the back removed. It appeared as though someone had poured juice over it, and the battery of the cell

phone was sticky. § 87(2)(b)'s memory card was destroyed as a result and he lost the video footage of his father. § 87(2)(b) felt that his father deliberately caused this damage to destroy the evidence of what really happened; however, his cousin, § 87(2)(b) told him that § 87(2)(b) claimed officers damaged the phone. § 87(2)(b) thought § 87(2)(b) and the officers were "in cahoots," and worked together to damage his phone.

**Witness:** § 87(2)(b)

- *At the time of this incident, § 87(2)(b) was § 87(2)(b) old. § 87(2)(b) is a black male, 5'7" tall, 180 pounds, with black hair and brown eyes. § 87(2)(b) is § 87(2)(b)'s father § 87(2)(b).*

**Domestic Incident Report (encl. [4L-M])**

§ 87(2)(b) wrote the following narrative: § 87(2)(b) is my son he threaten [sic] me with a [sic] orange box cutter because for two nights he came in with two different women I told him I did not want any women here he do not pay rent does not have a lease or receipt for rent he started cursing me and threaten me with an orange box cutter."

**CCRB Statement**

§ 87(2)(b) provided telephone statements on February 24, 2014 (encl. [4N-O]), and an in-person statement on March 6, 2014 (encl. [4P-V]). § 87(2)(g)

Eight months before this incident, § 87(2)(b) told § 87(2)(b) that he could stay in a basement room he formerly used for storage and camera monitors at his home on the condition that he stay only a few weeks and that he not bring female companions there. § 87(2)(b) disregarded both of these conditions and only once provided assistance by paying for utilities. § 87(2)(b) had repeatedly attempted to have § 87(2)(b) removed from his home, and at the time of the incident they had active proceedings in landlord-tenant court.

On December 25, 2013, at approximately 2 a.m., § 87(2)(b) brought over a female companion and § 87(2)(b) told her she had to leave. § 87(2)(b) and § 87(2)(b) began arguing in § 87(2)(b)'s basement room. § 87(2)(b) grabbed an orange box cutter and threatened § 87(2)(b) with it. § 87(2)(b) felt threatened by this particularly because § 87(2)(b) has attacked him and other family members in the past. § 87(2)(b) had also recently been released from prison, where he served a sentence for § 87(2)(b).

§ 87(2)(b) immediately called the police. Two officers, identified by the investigation as PO Burgos and his partner, PO Mochrie, responded. § 87(2)(b) met the officers outside and told them that § 87(2)(b) had threatened him with a box cutter and had a history of violent behavior, and explained to them his living situation and current dispute with § 87(2)(b). § 87(2)(b) led PO Burgos and PO Mochrie to the basement room where § 87(2)(b) was staying, where their argument took place. § 87(2)(b) noted that the basement was dark, and that he had to obtain an extension cord to rig a light for the officers. The stairs to the basement lead to a four-foot-wide hallway, to the left of which was the door to § 87(2)(b)'s room. When PO Burgos and PO Mochrie approached the room, the door was wide open. § 87(2)(b) stood two feet behind the officers and saw § 87(2)(b) sitting on his bed. The box cutter was not visible. PO Burgos and PO Mochrie entered the room without any discussion of permission with either § 87(2)(b) or § 87(2)(b) though § 87(2)(b) felt comfortable letting officers inside the room. § 87(2)(b) did not protest the entry. PO Burgos and PO Mochrie asked § 87(2)(b) what happened. § 87(2)(b) cursed at them, insulted their mothers, and raised his voice. Both officers told § 87(2)(b) to put his cell phone down. § 87(2)(b) refused.

§ 87(2)(b) heard knocking at the front door and went upstairs to allow additional officers inside, none of whom he could describe except as white or Hispanic males. These officers also entered § 87(2)(b)'s room. Shortly thereafter, § 87(2)(b) let another group of two or three officers inside, but they did not enter § 87(2)(b)'s room. § 87(2)(b) then stood in the basement hallway, approximately five feet away from § 87(2)(b)'s door, so that he could not see inside the room but could hear the conversation between § 87(2)(b) and the officers. The officers repeatedly told § 87(2)(b) "Put the phone down. You're being arrested. We can discuss whatever you have to say at the precinct." § 87(2)(b) refused, saying, "You're taking sides. I'm not going nowhere. I'm going to sue!"

§ 87(2)(b) heard a scuffle between § 87(2)(b) and the officers which lasted approximately three minutes. § 87(2)(b) did not see this struggle, but heard officers repeatedly tell § 87(2)(b) "Put your hands behind your back." Officers then escorted § 87(2)(b) from his room in handcuffs. § 87(2)(b) continued to provide resistance to officers by pushing his torso backwards as they attempted to walk him up the stairs. § 87(2)(b) did not see any injuries to his person, or any torn clothing. § 87(2)(b) did not remember if § 87(2)(b) ever wore a jacket during this incident, but knew that when he was escorted from the apartment he was not wearing one. § 87(2)(b) asked an unidentified officer who § 87(2)(b) could not describe to retrieve his jacket. The unidentified officer retrieved it from his room.

§ 87(2)(b) knew that the box cutter was recovered from § 87(2)(b)'s room because an officer, described as a uniformed dark-skinned Hispanic male officer, in his early 40s, 5'10" to 5'11" tall, with average build, and who remains unidentified, later asked him to identify it. § 87(2)(b) did not know which officer found it, where it was found, or at what point it was recovered. § 87(2)(b) after this incident saw two cell phones on the floor inside § 87(2)(b)'s room, one of which was covered in juice. § 87(2)(b) thought a beverage § 87(2)(b) had been drinking was accidentally knocked off a nearby table during the struggle and fell on the cell phone.

### **NYPD Statements:**

#### **Subject Officer: PO ANDREW BURGOS**

- *At the time of this incident, PO Burgos was § 87(2)(b) old. PO Burgos is a white male, 5'7" tall, 185 pounds, with brown hair and brown eyes.*
- *PO Burgos is an officer of the 79<sup>th</sup> Precinct. On December 25, 2013, PO Burgos worked from 11:15 p.m. until 7:50 a.m. PO Burgos was assigned to Patrol Sectors C, D, H, and I with PO Brian Mochrie. PO Burgos was in uniform and was assigned to marked vehicle 5169.*

#### **Memo Book (encl. [5A-C])**

At 2:35 a.m., PO Burgos responded to a family dispute with a knife at § 87(2)(b) in Brooklyn. At 2:49 a.m., PO Burgos arrested § 87(2)(b). PO Burgos completed arrest processing at the 79<sup>th</sup> Precinct stationhouse until 12:50 p.m.

#### **Arrest, Complaint, and Domestic Incident Reports (encl. [5D-M])**

PO Burgos completed all three reports. The narrative section states that § 87(2)(b) was in possession of a box cutter and threatened to cut the victim, § 87(2)(b) with it, saying, "I will cut you." § 87(2)(b) resisted arrest by backing his body up against a wall and stiffening his arms. § 87(2)(b) also resisted being handcuffed by stiffening his entire body, lying down on top of a mattress, and continually raising his arms above his head. Force was used to restrain, control, and remove § 87(2)(b). § 87(2)(b) was in apparently normal

condition. The complaint report notes that Lt. John Costin of the 79<sup>th</sup> Precinct was on scene, and the domestic incident report notes that the box cutter was recovered.

**CCRB Statement (encl. [5N-R])**

PO Burgos was interviewed at the CCRB on March 25, 2014. On December 25, 2014, at approximately 2:35 a.m., PO Burgos and PO Mochrie responded to a report of a family dispute involving a knife in the basement of § 87(2)(b) in Brooklyn. Upon arrival, PO Burgos spoke with § 87(2)(b). § 87(2)(b) explained that he and his son, § 87(2)(b) who since his recent release from prison had been staying with § 87(2)(b) had been arguing over § 87(2)(b) bringing female companions home when § 87(2)(b) threatened § 87(2)(b) with a box cutter. § 87(2)(b) also told PO Burgos that he was the owner of the building, and that § 87(2)(b) was still on scene, in a back room of the basement.

§ 87(2)(b) walked PO Burgos and PO Mochrie to the steps to the basement. PO Burgos went down the stairs first. The basement was extremely dark, and the stairs narrow, so that PO Burgos and PO Mochrie had to use their flashlights. As PO Burgos walked down the stairs, § 87(2)(b) told him that § 87(2)(b) was violent and likely to resist. § 87(2)(b) also informed PO Burgos that § 87(2)(b) had been incarcerated for 13 or 15 years for a violent offense. PO Burgos repeatedly identified himself as a police officer and asked § 87(2)(b) to come out, but heard no response.

At the base of the stairs, PO Burgos turned left and saw the partially ajar door to a room from which light emanated. PO Burgos upon approach knocked on the door, which caused it to open further slightly. After receiving no response to these knocks, PO Burgos pushed the door fully open. PO Burgos saw § 87(2)(b) sitting on a cot to the left of the door, approximately two feet from him. From the doorway, PO Burgos asked § 87(2)(b) if he had heard him identify himself as a police officer and ask him to come outside. § 87(2)(b) appeared to be nonchalant, and did not respond to PO Burgos. PO Burgos said to § 87(2)(b) “I heard you had an argument with your father. What happened?” § 87(2)(b) again did not respond. § 87(2)(b) pulled out his cell phone and made a call. PO Burgos ordered § 87(2)(b) to put down his phone repeatedly. § 87(2)(b) ignored his repeated orders and continued his phone conversation. § 87(2)(b)’s non-compliance heightened PO Burgos’s fear for his safety. PO Burgos did not know where the box cutter was at this time, and was not able to see it. PO Burgos did not remember what § 87(2)(b) wore during this incident.

PO Burgos moved fully into the room to stand in front of § 87(2)(b). PO Mochrie stood behind him. PO Burgos could not pinpoint the exact moment he crossed the threshold into the room. PO Burgos did not request permission to enter, nor did § 87(2)(b) provide it. PO Burgos felt it was necessary to enter because § 87(2)(b) presented a safety concern. He did not feel that there was time to obtain an arrest warrant because § 87(2)(b) “owned that house and needed § 87(2)(b) out,” and because of § 87(2)(b)’s aforementioned safety concern. Beyond the factors already mentioned, PO Burgos had no other reason to fear for his safety, and no other reason why immediate entry was necessary. Upon entry, PO Burgos ordered § 87(2)(b) to stand up. § 87(2)(b) complied. PO Burgos ordered § 87(2)(b) to turn around and put his hands behind his back. § 87(2)(b) did not do so, and began to scream and yell. PO Burgos did not remember anything that § 87(2)(b) said. PO Burgos noticed when § 87(2)(b) stood up that he was of large stature, estimated to be over 6’0” tall.

After § 87(2)(b) failed to comply with PO Burgos’s order that he turn around and put his hands behind his back, PO Burgos grabbed him by one of his arms. § 87(2)(b) immediately began to resist by pushing his back up against the wall behind the cot; the room was so small that he was able to do so without moving much. At this time, PO Mochrie approached

and grabbed § 87(2)(b)'s other arm. Both struggled to pull § 87(2)(b)'s arms behind his back. As they did so, PO Burgos and § 87(2)(b) accidentally fell onto the cot. PO Burgos could not describe how they landed on the cot. PO Burgos was unsure if PO Mochrie fell with them. PO Burgos never threw § 87(2)(b) onto the cot. PO Burgos mentioned that this would have been impossible for him to do because of § 87(2)(b)'s size. PO Burgos never deliberately brought § 87(2)(b) onto the cot. PO Burgos continued to hold § 87(2)(b) by the same arm. Once on the cot, § 87(2)(b) held his arms straight out in front of his body and above his head, which made it difficult to handcuff him. PO Burgos was unable to estimate how long the struggle to handcuff § 87(2)(b) lasted. PO Burgos was eventually able to pull § 87(2)(b)'s arms behind his back. PO Burgos did not remember any other officers arriving at this time, or assisting him in the struggle with § 87(2)(b). PO Burgos did not remember if he punched § 87(2)(b) and did not remember seeing any other officer do so.

After § 87(2)(b) was handcuffed, PO Burgos saw the box cutter on the floor at the foot of the cot where § 87(2)(b) had been sitting. PO Burgos thought it possible that the box cutter had been on the floor before, but that he had not been able to see it because § 87(2)(b)'s feet were obscuring it from view. PO Burgos did not remember if he recovered the box cutter or if another officer did, or at what point it was recovered.

§ 87(2)(b) was transported to the 79<sup>th</sup> Precinct stationhouse. PO Burgos did not recall which other officers or how many of them responded to this incident, but knew that there were more officers on scene besides himself and PO Mochrie. When PO Burgos escorted § 87(2)(b) outside, he saw that Lt. John Costin was on scene. PO Burgos only saw him outside the building, never inside. Lt. Costin verified § 87(2)(b)'s arrest.

PO Burgos did not recall any of § 87(2)(b)'s clothing tearing during the struggle. To his knowledge, PO Burgos never damaged any of § 87(2)(b)'s property, whether deliberately or otherwise, and never saw any officer do so. PO Burgos never saw that § 87(2)(b) had "cauliflower ear," or a swollen ear, and did not know how this injury was sustained. PO Burgos never observed any injuries to § 87(2)(b). § 87(2)(b) never complained of injuries or requested medical attention.

#### **Subject Officer: PO BRIAN MOCHRIE**

- *At the time of the incident, PO Mochrie was § 87(2)(b) old. PO Mochrie is a white male, 6'6" tall, 270 pounds, with brown hair and blue eyes*
- *PO Mochrie is an officer of the 79<sup>th</sup> Precinct. PO Mochrie worked from 11:15 p.m. on December 24, 2013 until 7:50 a.m. on December 25, 2013. PO Mochrie was uniformed and assigned to Patrol of Sectors C, D, H, and I with PO Burgos in marked vehicle 5169.*

#### **Memo Book (encl. [5S-U])**

At 2:25 a.m., PO Mochrie received a report of a family dispute at § 87(2)(b) in Brooklyn. At 2:30 a.m. PO Mochrie was present at the location. A victim claimed that the defendant menaced him with a knife and was hiding in the basement. At 2:41 a.m., the defendant resisted his arrest.

#### **CCRB Statement (encl. [5V-X])**

PO Mochrie was interviewed at the CCRB on April 9, 2014. PO Mochrie could not account for the difference between the location listed on the arrest report and his memo book. Upon arrival at the location, PO Mochrie and PO Burgos were met at the front door of the building by § 87(2)(b). § 87(2)(b) at an unknown juncture told either PO Burgos or PO Mochrie that he was the owner of the building. PO Mochrie thought the property was a privately-owned brownstone but was unsure. § 87(2)(b) told PO Mochrie that his son, § 87(2)(b)

§ 87(2)(b) had been released from prison 10 or 15 days prior and was temporarily staying with him. § 87(2)(b) and § 87(2)(b) had argued upstairs at the location and § 87(2)(b) had threatened him with a box cutter before going downstairs to the basement to hide. PO Mochrie did not remember what § 87(2)(b) meant by “hide,” and did not remember if he indicated where exactly in the basement § 87(2)(b) could be found. § 87(2)(b) also told PO Mochrie that § 87(2)(b) was violent, although he did not remember if he more specifically stated what was violent about him.

§ 87(2)(b) pointed out the entrance to the basement. PO Burgos walked down the steps to the basement ahead of PO Mochrie. At the time PO Mochrie entered the basement, he was nervous. PO Mochrie was nervous because § 87(2)(b) said § 87(2)(b) was violent, armed, and because the basement was spatially cramped with limited room to maneuver. As PO Mochrie and PO Burgos moved through the hallway, they repeatedly said, “Police, come out,” and received no response. This unresponsiveness also led PO Mochrie to fear for his safety.

PO Mochrie followed PO Burgos into a small room or cubby. PO Mochrie was unable to see § 87(2)(b) inside of this room before he crossed its threshold and entered into the room. PO Burgos did not remember if the room or cubby had a door. The room contained a cot and several piles of clothing. Upon entry, PO Mochrie saw § 87(2)(b) standing in the center of the room. PO Mochrie did not remember making any other observations of § 87(2)(b)s person or behavior at this time. Shortly after entering the room, either PO Mochrie or PO Burgos observed a box cutter on the floor one or two feet from § 87(2)(b).

After observing the box cutter, PO Mochrie and PO Burgos said, “Turn around. You’re under arrest.” The room was so small that the officers could not maneuver behind § 87(2)(b) to handcuff him. § 87(2)(b) said, “I’m not going to go,” cursed, and raised his voice. PO Burgos and PO Mochrie grabbed § 87(2)(b) though PO Mochrie did not remember how they held him. § 87(2)(b) began to stiffen his body and his arms, but PO Mochrie did not remember how his arms were positioned. PO Mochrie and PO Burgos managed to turn § 87(2)(b) around. Because the room was cramped and awkward, PO Mochrie fell. PO Mochrie was unsure what caused him to fall, but thought he may have tripped over one of the aforementioned piles of clothing or some other object. PO Mochrie may have landed on the corner of the aforementioned cot on his back, but was unsure. § 87(2)(b) and PO Burgos fell on top of PO Mochrie. PO Mochrie did not remember how they landed. § 87(2)(b) was never deliberately brought onto the cot. Once on the cot, PO Burgos and PO Mochrie quickly managed to pull § 87(2)(b)s arms, which were still stiffened, behind his back and place him in handcuffs. Neither PO Mochrie nor any other officer punched § 87(2)(b).

PO Mochrie knew additional officers arrived, but was unable to identify any besides Lt. Costin. PO Mochrie did not know of any officer matching the description of a black male officer in his 40s, 6’ to 6’1” tall, with facial hair and average build. PO Mochrie did not recall if any other officers ever entered § 87(2)(b)s room, and did not think other officers assisted in handcuffing him. PO Mochrie did not remember which officer recovered the box cutter or when.

**Subject Officer: PO KINSKI TITUS**

- *At the time of this incident, PO Titus was § 87(2)(b) old. PO Titus is a black male, 5’9” tall, 210 pounds, with black hair, brown eyes, and facial hair.*
- *PO Titus is an officer of Patrol Borough Brooklyn North. On December 24, 2013, PO Titus worked from 11:15 p.m. until 7:05 a.m. PO Titus was assigned to a shooting post in the vicinity of 425 Gates Avenue in Brooklyn. PO Titus was uniformed and worked alone in marked vehicle 4639.*

**Memo Book (encl. [5Y-AA])**



At 2:25 a.m., PO Titus was scratched by Lt. Costin. At 6:35 a.m., PO Titus was relieved by Sector C for a 10-62P, or a personal reason, at the 79<sup>th</sup> Precinct stationhouse.

**CCRB Statement (encl. [5AB-]**

PO Titus was interviewed at the CCRB on April 9, 2014. PO Titus did not remember exactly what he did after he was scratched by Lt. Costin. PO Titus did not remember how long Lt. Costin took in scratching him, and remembered that Lt. Costin was working alone, without an operator. PO Titus never responded to § 87(2)(b) in Brooklyn and was not familiar with the location. PO Titus never entered or searched § 87(2)(b) in Brooklyn. PO Titus did not use any physical force against § 87(2)(b) or participate in his apprehension.

**NYPD Documents**

**Event Information Sheet and Chronology (encl. [6A-E])**

At 2:29 a.m., § 87(2)(b) called to report that he was in a dispute with his family member in the basement apartment and a knife was involved. There were no injuries. At 2:34 a.m., 79<sup>th</sup> Precinct Sector C, identified by the investigation as PO Burgos and PO Mochrie, were assigned the job. At 2:43 a.m., a 79<sup>th</sup> Precinct Lieutenant, identified by the investigation as Lt. Costin, was present at the location. At 2:49 a.m., 79<sup>th</sup> Precinct Sector N, identified by the investigation as PO John Christopoulos and PO Douglas Graham, arrived at the location. At 2:49 a.m., either PO Burgos or PO Mochrie reported one arrest.

**Roll Call (encl. [6P-Q])**

Of all officers working within the 79<sup>th</sup> Precinct during Tour One of December 25, 2013, only two were black males with uniformed assignments aside from PO Titus. One of these officers, PO Markevens Pierre, was described in EDMS case 201102513 as § 87(2)(b) old, 5'8" tall, 180 pounds, with black hair, brown eyes, balding, and with a moustache (encl. [6R]). PO Pierre was assigned to a "fixer" post at 583 Throop Avenue in vehicle 5420. A "fixer" post means that a marked vehicle will park outside of a religious building to discourage criminal activity. The other officer, PO Derrick McIntosh, was described in EDMS case 201201237 as § 87(2)(b) old, 5'7" tall, 200 pounds, completely bald, with a moustache and brown eyes (encl. [6S]). PO McIntosh was assigned to Metrotech Security and was not assigned a vehicle.

**Medical Treatment of Prisoner Form (encl. [6F])**

Sgt. Christopher Ancona of Brooklyn Court Section completed the form. § 87(2)(b) § 87(2)(b) complained of back pain from a prior car accident but refused medical treatment.

**Property Voucher (encl. [6H-I])**

PO Burgos vouchered one orange-colored box cutter belonging to § 87(2)(b) as arrest evidence. PO Burgos was listed as the finder of this item.

**Arrest Photograph (encl. [6G])**

The arrest photograph of § 87(2)(b) does not depict any visible injuries.

**Arrest for Incident and Disposition**

- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

### **Status of Civil Proceedings**

- As of March 28, 2014, three days after the filing deadline, no Notice of Claim has been filed regarding this incident (encl. [8A]).

### **Civilian Criminal History**

- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

### **Civilian CCRB History**

- [§ 87(2)(b)] has filed the following CCRB complaints (encl. [3C]):
  - [§ 87(2)(b)]  
[REDACTED]  
[REDACTED]

### **Subject Officer CCRB History**

- PO Burgos has been a member of the service for four years and there are no substantiated CCRB allegations against him (encl. [3A]).
- PO Mochrie has been a member of the service for five years and there are no substantiated CCRB allegations against him (encl. [3B]).

## **Conclusion**

### **Identification of Subject Officers**

PO Burgos acknowledged that he was the first to enter [§ 87(2)(b)]'s room and that he used physical force against him. [§ 87(2)(g)]

[REDACTED] PO Mochrie also acknowledged using physical force against [§ 87(2)(b)] [§ 87(2)(g)]

[§ 87(2)(b)] alleged that PO Burgos, PO Mochrie, and a third officer repeatedly punched him. [§ 87(2)(b)] described the third officer as a black male in his 40s, 6'0" to 6'1" tall, with average build and facial hair, including a moustache. Amongst the officers listed as responding on the event chronology, including PO Burgos, PO Mochrie, PO Graham, PO Christopoulos, and Lt. Costin, none are black males. PO Titus, a black male, 5'9" tall, 210 pounds, with black hair, brown eyes, and facial hair, matches the provided description, was visited by Lt. Costin shortly before this incident, and worked a post at 425 Gates Avenue, which is less than a minute away from [§ 87(2)(b)] by vehicle. During his interview, PO Titus denied any participation in this incident. While there were two other uniformed officers matching the provided description working the first tour of the 79<sup>th</sup> Precinct, both can be eliminated as potential subjects because based upon their respective assignments neither would have been likely to respond to this type of incident. [§ 87(2)(g)]

### **Allegations Not Pleaded**

[§ 87(2)(g)]  
[REDACTED]  
[REDACTED]  
[REDACTED]

§ 87(2)(g)

§ 87(2)(g)

**Allegation A – Abuse of Authority: PO Andrew Burgos entered and searched § 87(2)(b) in Brooklyn.**

§ 87(2)(b) alleged that PO Burgos, followed by other officers, entered his room without requesting or receiving his consent. The door to his room was wide open when they entered and § 87(2)(b) did not protest their entry. § 87(2)(b) denied threatening § 87(2)(b) with a box cutter, or possessing one at the time of the incident. § 87(2)(b) did not allege any further search of the room.

§ 87(2)(b) confirmed that PO Burgos entered § 87(2)(b)'s room, the door to which was wide open, without requesting or receiving consent from § 87(2)(b). Before showing PO Burgos to § 87(2)(b)'s room, § 87(2)(b) told him that he owned the building, that § 87(2)(b) was staying there temporarily, that § 87(2)(b) had threatened him with a box cutter, and that § 87(2)(b) had a history of violent behavior. § 87(2)(b) knew that the box cutter was recovered because an officer asked him to identify it later. § 87(2)(b) did not know where officers found it, or which officer found it.

When PO Burgos and PO Mochrie entered § 87(2)(b)'s room, both feared for their safety because § 87(2)(b) said § 87(2)(b) was armed and had a violent past, because § 87(2)(b) did not initially respond to officers, and because of environmental factors, such as the darkness and spatial constraint of the basement. PO Burgos indicated that because of this fear, and because he thought that § 87(2)(b) owned and therefore lived in the building, he did not feel that he could wait to obtain an arrest warrant. Furthermore, the door to § 87(2)(b)'s room was partially open upon his approach. PO Mochrie did not remember whether the room had a door or not, and confirmed that § 87(2)(b) owned the building, though he did not remember how he obtained this information. Both PO Burgos and PO Mochrie indicated that the box cutter was found in plain view on the floor. PO Mochrie saw this before § 87(2)(b) was handcuffed, while PO Burgos did not see it until after he was arrested. Neither knew which officer recovered the box cutter.

A warrantless entry into a private dwelling must be justified by consent, exigent circumstances, or an emergency situation. Six factors are used to determine whether exigent circumstances exist, including whether there is probable cause that the suspect committed a crime, a reasonable belief that the suspect is in the premises being entered, the gravity and violent nature of the offense, whether the suspect is reasonably believed to be armed, the likelihood of escape, and the peaceful circumstances of the entry. *People v. McBride*, 14 N.Y.2d 440 (2010) (encl. [1A-G]) Under the plain view doctrine, if the sight of an object gives the police probable cause to believe it is the instrumentality of a crime, the object may be seized without a warrant if the police are lawfully in view of the object, have lawful access to it, and its incriminating nature is immediately apparent. *People v. Diaz*, 81 N.Y.2d 106 (1983) (1H-K).

§ 87(2)(g)

§ 87(2)(g)

**Allegation B – Force: PO Andrew Burgos used physical force against § 87(2)(b)**

**Allegation C – Force: PO Brian Mochrie used physical force against § 87(2)(b)**

**Allegation D – Force: PO Kinski Titus used physical force against § 87(2)(b)**

In his in-person statement, § 87(2)(b) indicated that after he refused repeated instructions to put his cell phone down, PO Burgos punched him on his left ear, threw him face-down onto his futon, and, in conjunction with two unidentified officers, repeatedly punched him on his face, neck, and shoulders for approximately one minute. In his telephone statement, § 87(2)(b) alleged that he was repeatedly punched and that an officer pushed his knee into the back of his neck for a few seconds. § 87(2)(b) denied resisting officers or hearing them issue any orders, and characterized his demeanor during the incident as calm. § 87(2)(b) in his telephone statement said he sustained a cut in his mouth from these blows. In his in-person statement, he alleged that he sustained “cauliflower ear,” or swelling to his left ear.

§ 87(2)(b) did not seek medical treatment as a result of this incident. The medical treatment of prisoner form notes that § 87(2)(b) complained of back pain from an old injury, but refused medical treatment. There are no apparent injuries depicted in his arrest photograph.

§ 87(2)(b) heard officers repeatedly tell § 87(2)(b) to put down his cell phone. § 87(2)(b) did not see how § 87(2)(b) was handcuffed, but heard a scuffle, and officers repeatedly saying, “Put your hands behind your back.” When officers escorted § 87(2)(b) from the room, they appeared to be exhausted. § 87(2)(b) resisted officers by leaning his torso backwards as they walked him upstairs. § 87(2)(b) never saw injuries to § 87(2)(b).

PO Burgos indicated that after § 87(2)(b) refused to cooperate with repeated orders to put down his cell phone and put his hands behind his back, and after § 87(2)(b) began yelling, he grabbed him on his left arm. § 87(2)(b) backed up against a wall away from PO Burgos, at which time PO Mochrie grabbed his other arm. As PO Burgos attempted to pull § 87(2)(b)'s arms behind his back, they fell onto the futon. § 87(2)(b) stiffened his arms straight out in front of his body. PO Burgos did not recall if any other officer assisted in the struggle with § 87(2)(b) on the futon. PO Burgos did not remember punching § 87(2)(b) or seeing any officer do so. PO Mochrie similarly indicated that § 87(2)(b) was not compliant with officer's commands, that he stiffened his arms, and that the fall onto the cot was accidental. PO Mochrie denied punching § 87(2)(b) or seeing any officer do so. PO Titus denied using any physical force against § 87(2)(b).

It is not disputed that § 87(2)(b) was uncooperative with officers in that he refused to put down his cell phone. § 87(2)(b) denied resisting, and § 87(2)(b) did not see how § 87(2)(b) was handcuffed. PO Burgos was highly specific regarding the manner in which § 87(2)(b) resisted and PO Mochrie was consistent with him. § 87(2)(b) heard but did not see the scuffle, and saw that § 87(2)(b) continued to resist officers even after he was removed from the room. PO Burgos and § 87(2)(b) both indicated that officers repeatedly ordered § 87(2)(b) to put his hands behind his back during the struggle.

According to Patrol Guide Section 203-11 regarding the use of force, officers are required to use the minimum amount of force necessary to overcome resistance and effect an arrest (encl. [1L-M])

§ 87(2)(g)

§ 87(2)(g) [Redacted]  
[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]

§ 87(2)(g) [Redacted]  
[Redacted]  
[Redacted]

§ 87(4-b) § 87(2)(g) [Redacted]  
[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]

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Team: \_\_\_\_\_

Investigator: \_\_\_\_\_  
Signature                      Print                      Date

Supervisor: \_\_\_\_\_  
Title/Signature                      Print                      Date

Reviewer: \_\_\_\_\_  
Title/Signature                      Print                      Date

Reviewer: \_\_\_\_\_  
Title/Signature                      Print                      Date